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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,683	09/02/2005	Frederic Impellizzeri	1811-64	7190
24106	7590	08/21/2008		
EGBERT LAW OFFICES 412 MAIN STREET, 7TH FLOOR HOUSTON, TX 77002			EXAMINER HOFFMAN, MARY C	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 08/21/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,683

Applicant(s)

IMPELLIZZERI, FREDERIC

Examiner

MARY HOFFMAN

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-21, 23, 25, 26 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-21, 23, 25, 26 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 19-21, 23, 25 and 28 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The disclosure does not reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the limitation "uniform width" in claim 19, line 9. the inserts shown in the figures do not appear to be uniform in width; rather, the width appears to vary. Also, the term "uniform" width is not disclosed in the specification.

The disclosure does not reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the limitation "planarly fixed" in claim 28, line 14. The specification does not recite this term, and the drawings do not appear to show planarly fixed inserts. Rather, the inserts appear to be rounded and protruding from the planar bone plate surface in FIGS. 4-6. Thus, the term "planarly fixed" is being considered new matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kummer et al. (U.S. Patent No. 4,338,926) in view of Frigg et al. (U.S. Patent No. 6,206,881).

Kummer et al. disclose a self-locking osteosynthesis device comprising a plate (ref. #1) having a plurality of openings formed therein, each of the plurality of openings having a diameter and an edge (see FIG. 4) forming a shoulder within the opening, the plate being formed of a metallic material; a plurality of inserts (see FIG. 4 ref. #'s 31-34) respectively fixedly and non-rotationally received in the plurality of openings (when the screw is inserted), each of the plurality of inserts defining a hole having an wall and a diameter less than the diameter of the opening, each of the plurality of inserts being formed of a biocompatible polymeric material, each insert fixedly engaging the shoulder of the opening, a plurality of bone screws respectively received in the hole of the plurality of inserts, the plurality of bone screws having a thread (see ref. #'s 4-7) on an outer surface thereof, the biocompatible polymeric material being suitable for, or capable of, allowing a self-tapping of the smooth wall of the hole with the thread of the plurality of bone screws, and the bone screws having a head locked in the plurality of

inserts when the thread of the bone screw engages an underlying surface. The plurality of inserts being mechanically secured in the plurality of openings.

Buhler et al. disclose the claimed invention except for each tapping bone screw head having a conical shape and conical threading allowing the bone screw to be angularly received into conical openings; and tapping the openings

Frigg et al. disclose tapping bone screw heads having a conical shape and conical threading allowing the bone screws to be angularly received into conical openings to achieve locking even when the bone screw is imperfectly inserted coaxially (see FIG. 1-2, col. 2, lines 1-7 and line 24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Buhler et al. with tapping bone screw heads having a conical shape and conical threading allowing the bone screw to be angularly received into conical openings in view of Frigg et al. to achieve locking even when the bone screw is imperfectly inserted coaxially.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARY HOFFMAN whose telephone number is

(571)272-5566. The examiner can normally be reached on Monday-Thursday 10:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary C. Hoffman/
Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733